

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Petition of MCImetro Access Transmission)	
Services, L.L.C., Brooks Fiber Communications)	
of Missouri, Inc., and MCI WorldCom)	Case No. TO-2002-222
Communications, Inc. for Arbitration of an)	
Interconnection Agreement With Southwestern)	
Bell Telephone Company Under the)	
Telecommunications Act of 1996.)	

**SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE TO STAFF'S RECOMMENDATION**

Comes now Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and, for its Response to Staff's Recommendation, states as follows:

1. On May 1, 2002, the Staff of the Missouri Public Service Commission ("Staff") filed its Recommendation in the above-referenced matter. SWBT does not believe that Staff's recommendation adequately addresses the factual background or SWBT's position regarding the disputes between MCImetro Access Transmission Services, L.L.C. ("MCImetro") and SWBT. SWBT, therefore, files this Response to Staff's Recommendation.

2. On February 28, 2002, the Missouri Public Service Commission ("Commission") issued its Arbitration Order in the above-referenced matter. The Commission ordered MCImetro, Brooks Fiber Communications of Missouri, Inc. ("Brooks"), MCI WorldCom Communication, Inc. ("MCIWC") and SWBT to incorporate the Commission's resolution of each open issue as described in the Arbitration Order into their interconnection agreement and provide a draft of the conformed agreement to the Staff within 30 days following the date of the Arbitration Order.

3. On March 11, 2002, SWBT sent an electronic draft of the conformed agreement to MCImetro, Brooks, and MCIWC (collectively referred to as "WCOM"). The conformed agreement included Attachments 6, 10, 18, and 27, General Terms and Conditions ("GT&Cs"), the UNE Price

Appendix and the UNE Price Schedule.

4. Rather than conforming an agreement to the Arbitration Order, WCOM advised that MCImetro wanted to: (a) opt into the M2A with the exception of Attachment 18 (Mutual Exchange of Directory Listing Information); (b) delete Section 6 of Attachment 5 (related to Alternatively Billed Traffic); (c) delete Section 8 of Attachment 10 (related to Alternatively Billed Traffic); (d) take arbitrated Attachment 18; and (e) take arbitrated Attachment 27. WCOM further advised that Brooks and MCIWC wanted to: (a) opt into the M2A with the exception of Attachment 18 (Mutual Exchange of Directory Listing Information); and (b) take arbitrated Attachment 18. SWBT and WCOM agreed that Brooks and MCIWC could: (a) opt into the M2A with the exception of Attachment 18 (Mutual Exchange of Directory Listing Information); and (b) take arbitrated Attachment 18. However, the parties disagreed with regard to whether MCImetro could attempt to accept only certain portions of the Arbitration Order (i.e. Attachment 27) while rejecting others (i.e. Attachments 6 and 10).

5. SWBT subsequently advised WCOM of its position that WCOM could not opt into Attachment 6-10 of the M2A while also attempting to take arbitrated Attachment 27 because Section 8.0 of Attachment 10 contains language that is in conflict with the provision of Attachment 27.

6. When it became apparent that the parties were not going to be able to send Staff conforming agreements on April 1, 2002, WCOM and SWBT contacted Staff and advised Staff that they were still attempting to negotiate and hoped to resolve all disputes between the entities. However, in the event that the parties were unable to resolve their differences, each party would present its position in a letter to Staff on April 2, 2002. Staff consented to this arrangement.

7. WCOM and SWBT, therefore, submitted a joint letter to Staff as well as individual

letters from each party. The joint letter (without enclosures) is attached hereto and marked as Exhibit A, WCOM's letter is attached hereto and marked as Exhibit B, and SWBT's letter is attached hereto and marked as Exhibit C. Since WCOM refused to provide SWBT with a copy of its letter before it provided it to Staff, SWBT was compelled to respond to WCOM's letter the following day, April 3, 2002. A copy of that letter is attached hereto and marked as Exhibit D.

8. On April 22, 2002, WCOM, SWBT, and Staff had a conference call to attempt to resolve the differences between MCImetro and SWBT. That attempt was unsuccessful and the parties determined that Staff would prepare a Recommendation to the Commission. The parties further agreed that Staff would send a draft to WCOM and SWBT eliciting their input prior to making the filing.

9. On April 29, 2002, Staff sent a draft of its Recommendation to WCOM and SWBT. In its draft Recommendation, Staff recommended that the Commission issue a subsequent order (a) affirming its original decision on all arbitrated issues, meaning that the agreement would then incorporate the Commission's decisions with regard to Attachments 6, 10, 18, and 27; or (b) ordering MCImetro to adopt the M2A with the exception of Attachment 18 and order conformed Attachment 18.

10. Apparently realizing that MCImetro could not opt into Attachment 6-10 (UNE) from the M2A because it was dissatisfied with the Commission's decision on those arbitrated issues, while also attempting to accept the Commission's decision on Attachment 27, concerning Alternatively Billed Traffic, because Attachment 10, Section 8.0 of the M2A is inconsistent with Attachment 27, MCImetro changed its position again. Specifically, MCImetro advised that it would proceed with Attachments 6-10 conformed to the Commission Order, together with Attachment 27.

11. SWBT notes, that although it sent initial electronic drafts of the conformed

interconnection agreements to WCOM on March 11, 2002, with updates to Attachments 18 and 27 on March 26, 2002, WCOM has never advised SWBT whether it agrees with the conformed documents. Thus, Attachments 6 and 10, Appendix UNE Pricing, and the UNE Price Schedule, have not been presented to Staff.

12. Further, it is SWBT's understanding that although MCImetro is currently agreeing that it will proceed with Attachments 6-10 conformed to the Commission Order, together with Attachment 27, MCImetro intends to later attempt to MFN into Attachment 6-10 of the M2A. Thus, SWBT anticipates that the Commission will be faced with a dispute between the parties. It is clear that MCImetro may not opt into the M2A with regard to Attachments 6-10 and take arbitrated Attachment 27 with terms that are inconsistent with Attachments 6-10 of the M2A. MCImetro may not opt into Attachments 6-10 of the M2A and then seek to change those provisions through Attachment 27.

13. SWBT's position is supported by the express language of the M2A. One of the legitimately related provisions that is contained in Attachment 26 – Legitimately Related Provisions, and is therefore applicable if MCImetro opts into Attachments 6-10 (UNE) at any time is General Terms and Conditions Section 18.1. Section 18.1 provides:

[e]xcept as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver, or consent is claimed. . . .

SWBT does not agree to an amendment to M2A Attachments 6-10 (UNEs) regarding Alternatively Billed Traffic in the form of Attachment 27. Thus, if MCImetro seeks to opt into M2A Attachments 6-10 (UNEs), it may not change these attachments by taking arbitrated Attachment 27 (Alternatively Billed Traffic).

14. Thus, MCImetro may not take a back door approach attempting to MFN into M2A Attachments 6-10 while claiming the benefits of the Commission's decision on Attachment 27

because Attachment 27 conflicts with Section 8.0 of Attachment 10 with regard to Alternatively Billed Traffic. As this issue appears likely to come before the Commission in the near future when MCImetro seeks to take Attachment 6-10 of the M2A, the Commission may wish to make it clear to MCImetro that it may not selectively accept portions of the Arbitration Order. If MCImetro wants the benefit of the Arbitration Order on Attachment 27, it may not reject the Arbitration Order as to Attachment 6 and 10 and instead take the M2A, as the terms of the M2A are inconsistent with Attachment 27.

Wherefore, Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company prays that the Commission accepts its Response to Staff's Recommendation and determine that if MCImetro takes arbitrated Attachments 6-10 and Attachment 27 it may not, in the future, MFN into Attachments 6-10 of the M2A because Attachment 27 conflicts with the provisions of Section 8.0 of Attachment 27.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY Mimi B. Macdonald TM

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail or via hand-delivery on May 3, 2002.

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April 2, 2002

Mr. Bruce H. Bates
Assistant General Counsel
Missouri Public Service Commission
200 Madison Street, 8th Floor
P.O. Box 360
Jefferson City, Missouri 65102

In re: Case No. TO-2002-222
WCOM-SWBT Arbitration.

Dear Bruce:

As you know, in the Missouri Public Service Commission's Arbitration Order in the above-referenced case, the Commission ordered the parties to incorporate the Commission's resolution of each open issue as described in the Arbitration Order into their interconnection agreement and provide a draft of their conformed interconnection agreement to the Staff of the Missouri Public Service Commission ("Staff") within 30 days following the effective date of the Order. Because this arbitration involves three separate interconnection agreements, we provide the following status report regarding each of those agreements.

The Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, and Brooks Fiber Communications of Missouri, Inc. Interconnection Agreement

Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and Brooks Fiber Communications of Missouri, Inc. ("Brooks") agree that Brooks will opt into the Missouri 271 Agreement ("M2A") with regard to the following items: General Terms and Conditions, Resale (Attachments 1-5 & Appendices), UNEs (Attachments 6-10 & Appendices), Interconnection (Attachment 11 & Appendices), Reciprocal Compensation (Attachment 12 & Appendix), Ancillary Functions (Attachment 13 and Appendices), Number Portability (Attachment 14 and Appendix), E911 (Attachment 15), Network Security & Law Enforcement (Attachment 16), Performance Measures (Attachment 17, including Performance Remedy Plan and Appendices), White Pages-Other (Attachment 19), Clearinghouse (Attachment 20), Numbering (Attachment 21), DA-Facilities Based (Attachment 22), OS-Facilities Based (Attachment 23), Recording-Facilities Based (Attachment 24 and Appendices), DSL (Attachment 25), and Legitimately Related Provisions (Attachment 26). Because Brooks

EXHIBIT A

is opting into these M2A items, these items are not being provided to Staff. If Staff would like a copy of these sections of the M2A, SWBT will provide them to Staff. Brooks and SWBT, however, submit Mutual Exchange of Directory Listing Information (Attachment 18), which is a draft of a conformed interconnection agreement item to the Staff for its review. Attachment 18 contains both arbitrated and negotiated language.

The Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, and MCI WorldCom Communications, Inc. Interconnection Agreement

SWBT and MCI WorldCom Communications, Inc. ("MCIWC") agree that MCIWC will opt into the M2A with regard to the following items: General Terms and Conditions, Resale (Attachments 1-5 & Appendices), UNEs (Attachments 6-10 & Appendices), Interconnection (Attachment 11 & Appendices), Reciprocal Compensation (Attachment 12 & Appendix), Ancillary Functions (Attachment 13 and Appendices), Number Portability (Attachment 14 and Appendix), E911 (Attachment 15), Network Security & Law Enforcement (Attachment 16), Performance Measures (Attachment 17, including Performance Remedy Plan and Appendices), White Pages-Other (Attachment 19), Clearinghouse (Attachment 20), Numbering (Attachment 21), DA-Facilities Based (Attachment 22), OS-Facilities Based (Attachment 23), Recording-Facilities Based (Attachment 24 and Appendices), DSL (Attachment 25), and Legitimately Related Provisions (Attachment 26). Because MCIWC is opting into these M2A items, these items are not being provided to Staff. If Staff would like a copy of these sections of the M2A, SWBT will provide them to Staff. MCIWC and SWBT, however, submit Mutual Exchange of Directory Listing Information (Attachment 18), which is a draft of a conformed interconnection agreement item to the Staff for its review. Again, Attachment 18 contains both arbitrated and negotiated language. Additionally, please note that only one Attachment 18 accompanies this letter because Attachment 18 will be the same for Brooks and MCIWC (and MCIIm as noted below).

The Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, and MCImetro Access Transmission Services, L.L.C. Interconnection Agreement

SWBT and MCImetro Access Transmission Services, L.L.C. ("MCIIm") agree that MCIIm will opt into the following items: General Terms and Conditions, Resale (Attachments 1-5 & Appendices), UNEs (Attachments 6-10 & Appendices), Interconnection (Attachment 11 & Appendices), Reciprocal Compensation (Attachment 12 & Appendix), Ancillary Functions (Attachment 13 and Appendices), Number Portability (Attachment 14 and Appendix), E911 (Attachment 15), Network Security & Law Enforcement (Attachment 16), Performance Measures (Attachment 17, including Performance Remedy Plan and Appendices), White Pages-Other (Attachment 19), Clearinghouse (Attachment 20), Numbering (Attachment 21), DA-Facilities Based (Attachment 22), OS-Facilities Based (Attachment 23), Recording-Facilities Based (Attachment 24 and Appendices), DSL (Attachment 25), and Legitimately Related Provisions (Attachment 26). Because MCIIm is opting into these M2A items, these items

Bruce H. Bates

April 2, 2002

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are not being provided to Staff. If Staff would like a copy of these sections of the M2A, SWBT will provide them to Staff. MCIIm and SWBT, however, submit Mutual Exchange of Directory Listing Information (Attachment 18), which is a draft of a conformed interconnection agreement item to the Staff for its review. Again, Attachment 18 contains both arbitrated and negotiated language. Further, as previously stated, please note that only one Attachment 18 accompanies this letter because Attachment 18 will be the same for Brooks, MCIWC, and MCIIm. Additionally, enclosed please find Alternatively Billed Traffic (Attachment 27), which is a draft of a conformed interconnection agreement item to the Staff for its review. There is a dispute between the parties regarding Attachment 27. Each party is submitting a separate letter to you that explains their position on this dispute.

If you have any questions, please do not hesitate to contact us. Carl Lumley can be reached at (314)725-8788. Paul Lane can be reached at (314)235-4300.

Very truly yours,

Very truly yours,

Carl Lumley

Paul G. Lane

Enclosures

EXHIBIT A

April 2, 2002

Mr. Bruce H. Bates, Assistant General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65102

via fax 573-751-9285

In re: Case No. TO-2002-222, WCOM-SWBT Arbitration.

Dear Bruce:

As stated in the joint letter submitted to Staff by the parties regarding the conformed interconnection agreement, there is a dispute regarding Attachment 27. As MCImetro understands it, SWBT asserts that MCImetro cannot adopt Attachments 5 and 10 of the M2A and include Attachment 27 in the agreement as well. MCImetro submits that the Commission has already resolved this issue, Issue 30, in the Arbitration Order in MCImetro's favor, based upon Staff's recommendations.

In the Arbitration Order, at footnote 19, the Commission expressly held that MCImetro's adoption of M2A provisions (specifically Attachment 5) did not preclude it from proposing ABT provisions in Attachment 27. Further, the Commission's decision on Issue 30 adopted MCImetro's proposed Attachment 27 (with modifications in accordance with the Staff's recommendations), and thereby declined MCImetro's alternative proposal of a change to Attachment 10, and rejected SWBT's position which called for changes to Attachment 10 or a different version of Attachment 27.

The end result of the Commission's decision on Issue 30 was an unaltered M2A Attachment 10 and the new MCImetro Attachment 27. The other issues in the case (Issues 12 and 50) regarding Attachment 10 involved rates and did not bear upon the relationship between these Attachments.

Hence, MCImetro's position on this dispute raised by SWBT is that Attachment 27 should be included in the final agreement in compliance with the Commission's Arbitration Order. We would appreciate Staff's support in resolving this dispute.

Very truly yours,

Carl Lumley

EXHIBIT B

April 2, 2002

Mr. Bruce H. Bates
Assistant General Counsel
Missouri Public Service Commission
200 Madison Street, 8th Floor
P.O. Box 360
Jefferson City, Missouri 65102

In re: Case No. TO-2002-222
WCOM-SWBT Arbitration.

Dear Bruce:

As referenced in our letter dated April 2, 2002, that we wrote jointly with the WCOM entities, there is a dispute between Southwestern Bell Telephone, L.P, d/b/a Southwestern Bell Telephone Company ("SWBT") and MCImetro Access Transmission Services, L.L.C. ("MCI") regarding Attachment 27. I am sorry to report that although SWBT shared its position with MCI, MCI refused to share its position with SWBT despite an explicit request that it do so. Thus, although this letter reflects SWBT's position, we reserve the right to add to, modify, or alter our position when we receive a copy of MCI's letter to Staff.

As you know, MCI is attempting to opt into the M2A with regard to Attachments 1-5 (Resale) and 6-10 (UNEs). MCI is also attempting to adopt arbitrated Attachment 27 even though Section 6.0 of Attachment 5 and Section 8 of Attachment 10 conflict with provisions regarding alternatively billed traffic that are contained in Attachment 27. It is SWBT's position that while MCI may elect to opt into the M2A with regard to Attachments 1-5 (Resale) and 6-10 (UNEs), MCI may not opt into the M2A with regard to Attachment 1-5 (Resale) and 6-10 (UNEs) while seeking changes in those Attachments through arbitrated Attachment 27.

Specifically, Attachment 26 provides that if a party wants the Resale provisions of the M2A, then it must opt into Attachments 1-5 and Appendices, as well as the General

EXHIBIT C

Terms and Conditions specified in Attachment 26, applicable prices and Attachment 26. Attachment 26 further provides that if a party wants the UNE provisions of the M2A, then it must opt into Attachment 6-10 and Appendices, the General Terms and Conditions specified in Attachment 26, and Attachment 26. Thus, if MCIm wants to opt into Attachments 1-5 (Resale), it must take the General Terms and Conditions that are specified in Attachment 26, applicable prices and Attachment 26. Similarly, if MCIm wants to opt into Attachments 6-10 (UNEs), it must take the General Terms and Conditions specified in Attachment 26 and Attachment 26. MCIm may not opt into Attachments 1-5 and 6-10 and then seek to change those provisions through Attachment 27.

Furthermore, one of the General Terms and Conditions that is contained in Attachment 26, and is therefore applicable if MCIm opts into Attachments 1-5 (Resale) and 6-10 (UNEs) is Section 18.1. Section 18.1 provides:

[e]xcept as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver, or consent is claimed. . . .

SWBT does not agree to an amendment to Attachments 1-5 (Resale) or Attachments 6-10 (UNEs) regarding alternatively billed traffic. Thus, if MCIm seeks to opt into Attachments 1-5 (Resale) and Attachments 6-10 (UNEs), it may not change these attachments by taking arbitrated Attachment 27 (Alternatively Billed Traffic).

That MCIm is attempting to "have its cake and eat it too" is evident when one reviews MCIm's pleadings and testimony in this case. WCOM previously conceded that, pursuant to Attachment 26, it may not elect to opt into the M2A for Attachments 5 and 10 and additionally contend that it is incorporating the Commission's decision concerning Attachment 27. In its Reply to Staff's January 11, 2002 Filing, WCOM stated: "WCOM has not challenged the provisions of Attachment 26, but rather has adopted it and complied with it. WCOM has not asked to adopt a provision of the M2A in a manner that would contradict Attachment 26." Further, during the arbitration of this matter, WCOM attorney Michael Schneider also concluded that MCIm could not opt into portions of the M2A and seek changes in those sections. Specifically, Mr. Schneider testified as follows:

Q. Okay. My question probably wasn't precise enough. We're in agreement in terms of identifying how and what sections a CLEC like WorldCom has to take if it wants to take portions of the M2A, and specifically with regard to unbundled network elements, we're in agreement that you have to take all of Attachment 6 and 10, and if you don't take all of them, then the parties have to negotiate and arbitrate if they're not able to reach agreement?

A. WorldCom's position is if you want to make changes to Attachments 6 and 10 that those attachments and the legitimately related provisions thereto are up for negotiation/arbitration.

(T. 976, Schneider).

MCIm conceded at the hearing that it was not opting into Attachments 6-10 of the M2A and that each provision was subject to negotiation and, if agreement were not reached, arbitration. T. 959-60 Schneider. In its Arbitration Order, the Commission rejected MCIm's attempt to include certain provisions contained in the M2A to the agreement. Not satisfied with that outcome, MCIm now seeks to take Attachments 6-10 from the M2A but still claim the benefits of the Commission's decision on Attachment 27. This MCIm may not do because the provisions of Attachment 27 conflict with Attachment 10.

Again, because MCIm has refused to provide SWBT with its position prior to sending it to Staff, SWBT reserves the right to respond to SWBT's letter. If you have any questions, please do not hesitate to contact me. I can be reached at (314)235-4300.

Very truly yours,

Paul G. Lane

cc: Carl Lumley

April 3, 2002

Mr. Bruce H. Bates
Assistant General Counsel
Missouri Public Service Commission
200 Madison Street, 8th Floor
P.O. Box 360
Jefferson City, Missouri 65102

In re: Case No. TO-2002-222
WCOM-SWBT Arbitration.

Dear Bruce:

We are in receipt of MCImetro Access Transmission Services, L.L.C.'s ("MCI's") letter to you dated April 2, 2002. Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") provides the following brief response.

At the outset, SWBT notes that MCI has significantly changed its position regarding Attachments 6-10 (UNE) from the position that it has taken throughout the course of this proceeding. Specifically, prior to MCI's letter to you, MCI had consistently taken the position that it was not opting into the M2A regarding Attachments 6-10 (UNE); rather, MCI was not opting into those Attachments and MCI recognized that all provisions in those Attachments were open for negotiation and, since that did not result in an interconnection agreement, to arbitration. MCI now, apparently dissatisfied with the Commission's decision on various Attachment 6 issues, wants to opt into the M2A with regard to Attachments 6-10 (UNE) while altering the provisions of Attachment 10, Section 8.0, Alternatively Billed Traffic, which conflict with the provisions that are contained in Attachment 27. While MCI has the right to change its mind and opt into Attachments 6-10 (UNE) of the M2A, MCI may not opt into Attachments 6-10 (UNE) and still claim the benefits of the arbitration decision on Attachment 27 as the provisions contained therein are inconsistent with the provisions contained in Attachment 10, Section 8.0, Alternatively Billed Traffic.

If you have any questions, please do not hesitate to contact me. I can be reached at (314) 235-4300.

Very truly yours,

Paul G. Lane

cc: Carl Lumley

EXHIBIT D